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# **EXPLANATORY STATEMENT**

Proposal for a modification of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976

Committee on Constitutional Affairs

Rapporteur: Andrew Duff

# EXPLANATORY STATEMENT

## THE ELECTORAL REFORM OF THE EUROPEAN PARLIAMENT

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### *Origins*

A European Parliament directly elected by universal suffrage is a key feature of the constitutional order of the European Union. As long ago as 1951, Article 20 of the Treaty of Paris on the European Coal and Steel Community provided for an Assembly consisting of ‘representatives of the peoples of the States brought together in the Community’. Article 21(3) said:

*The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.*

*The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their constitutional requirements.*

This same provision was adopted by Article 138(3) of the Treaty of Rome (1957) which established the European Economic Community.<sup>1</sup>

The Common Assembly of the ECSC urged implementation of the provision as early as 1954.<sup>2</sup> In 1960 the European Parliamentary Assembly drafted a Convention on the introduction of direct elections which it submitted to the Council for consideration.<sup>3</sup> No progress was made on the matter, however, until the summit meeting at The Hague in December 1969 re-established the item on the Council’s agenda. The Vedel Report (1972), mandated by the European Commission, recommended early implementation of the Treaty provision with respect to direct elections.<sup>4</sup> Vedel suggested that the term ‘uniform electoral procedure’ should not necessarily be taken to mean that complete uniformity of electoral system had to be achieved at one step: the Parliament could move towards a single electoral law once it had won extra legitimacy on the strength of its first direct election.

In December 1974, meeting in Paris under the chairmanship of Valéry Giscard d’Estaing, the heads of government took the decision in principle to proceed with direct elections ‘as soon as possible ... at any time in or after 1978’.<sup>5</sup> This complemented their decision to transform their own ad hoc summit meetings into the formal European Council - and may even have been a quid pro quo.

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<sup>1</sup> Also Article 108 (3) of the Euratom Treaty.

<sup>2</sup> Teitgen Report, Committee for Political Affairs and External Relations, Document Nr. 5 1954/1955 and Common Assembly Resolution of 2 December 1954 concerning the powers of the Common Assembly and their use; ECSC, OJ of 11.12.1954.

<sup>3</sup> Dehousse Report, OJ 37, 2.6.1960.

<sup>4</sup> *Report of the Working Party examining the problem of the Enlargement of the Powers of the European Parliament*, Bulletin of the European Communities, Supplement 4/72.

<sup>5</sup> Paragraph 12 of the Communiqué of the heads of government, Paris, 9-10 December 1974. The UK and Denmark reserved their positions. The decision was confirmed by the European Council in Rome the following December.

The European Parliament had already set to work to revisit its draft Convention of 1960. The Patijn Report proposed a directly elected Parliament with a five year mandate.<sup>1</sup> National electoral systems would apply in the first instance but for a transitional period only, pending the introduction of a more uniform electoral system, presumed to be ready in time for the second elections. Polling would take place across the Community within the same three days. Dual parliamentary mandates would be permitted but not encouraged. A list was agreed of the offices at EC level deemed incompatible with a European Parliamentary mandate. 355 seats (for the then nine States) would be distributed on a proportional basis, as follows: Germany 71, UK 67, Italy 66, France 65, Netherlands 27, Belgium 23, Denmark 17, Ireland 13, Luxembourg 6. The privileges and immunities of directly-elected MEPs would be those of their national equivalents. National discretion would also apply with respect to the eligible age of electors and candidates, the filling of vacancies, the rules for political parties, and MEPs' terms and conditions. Pending the entry into force of the uniform electoral procedure, Parliament would rule on the verification of the credentials of Members.

The Patijn Report proved to be sufficiently pragmatic for Member States to take it as the basis for negotiation in the Council. The big stumbling block to an agreement continued to be the British government's refusal to adopt an electoral system of a proportional type whereby seats won in the European Parliament would broadly match the votes cast in the ballot box. Although the lack of a uniform electoral procedure was the cause of great frustration at the time, in retrospect Parliament was surely right to concentrate on getting direct elections introduced in the first place and to postpone the perfection of the system until later.

### *Direct elections at last*

On 20 September 1976 the Council reached agreement on an Act concerning the election of the representatives of the European Parliament by direct universal suffrage. The Act, which has the status of primary law and which required ratification by each Member State, was annexed to a Decision.<sup>2</sup>

The Council established a chamber of 410 deputies (for the then nine States), with the four largest States enjoying an equal number of seats. While the objective of a future uniform electoral procedure was repeated, no timetable was set for its accomplishment. Voting was to take place between Thursday and Sunday. Pending the emergence of a uniform electoral procedure, the verification by Parliament of the credentials of those elected would take note of the official results declared in and by each Member State. A conciliation procedure was established with the Parliament to iron out the details.<sup>3</sup> After a certain delay, the first elections to the European Parliament took place in June 1979.

The newly elected Parliament soon addressed the matter of turning the 1976 Act into a uniform electoral procedure. The drafting of the Seitlinger Report focussed on the issue of extending proportional representation.<sup>4</sup> It proposed multi-member constituencies of between three and fifteen MEPs, with seats allocated by the D'Hondt system, and allowed for the possibility of preferential voting for individual candidates within lists. It noted that there could be deviation from the norm on the grounds of 'special geographical or ethnic factors'.

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<sup>1</sup> Patijn Report, adopted on 14 January 1975; OJ C 32, 11.2.1975.

<sup>2</sup> Council Decision 76/787/ECSC, EEC, EURATOM; OJ L 278, 8.10.1976.

<sup>3</sup> The UK and Denmark annexed declarations concerning their overseas territories; and Germany another with respect to Berlin.

<sup>4</sup> Seitlinger Report, adopted on 10 March 1982 by 158 votes to 77 with 27 abstentions; OJ C 87, 5.4.1982. Yet see the critical opinion of the Legal Affairs Committee (rapporteur D'Angelosante).

Seitlinger also sought to insist that nationals of one Member State resident in another for more than five years should be given the right to vote in their country of residence. It was proposed that polling be reduced to two days (Sunday and Monday). However, in view of the general political situation in the Community, coupled with continuing British refusal to abandon its simple majority system in single member constituencies, no progress was possible in the Council.

A similar fate awaited Reinhold Bocklet, appointed rapporteur on the matter in the next mandate, 1984-89. His efforts foundered on the obstacle of the British. Ingenuity was not able to marry proportional and non-proportional electoral systems within a framework which could credibly be called 'uniform' and which, at the same time, would induce a consensus within either Parliament or Council.

The fall of the Berlin Wall and the integration of East Germany into the Community necessitated a review of the number of German deputies in the European Parliament. After the 1989 elections (in the then 12 states), Karel De Gucht was appointed rapporteur on the dossier. He successfully produced two 'interim reports' which pushed things along. In the first, De Gucht repeated Parliament's earlier proposal for the use of D'Hondt.<sup>1</sup> Concerned about declining turnout in 1984 and 1989, he introduced to the debate the question of how the campaign for the European Parliamentary elections should be run and financed. In his second report, De Gucht proposed that the unified Germany's number of seats should rise to 99, leaving France, Italy and the UK with 87 each.<sup>2</sup> Finally, De Gucht proposed a top-up system whereby two-thirds of the British seats could be elected by simple majority in single member constituencies, but the remaining third would be distributed proportionately to the total vote of each party.

Nevertheless, despite the efforts of Parliament, it was the election of a Labour government in the UK in May 1997, assisted on this matter by the Liberal Democrats, which finally broke the logjam over the electoral system. For the 1999 elections a closed list system of regional proportional representation was introduced to Great Britain.<sup>3</sup> Similar reforms were made in France in time for the 2004 elections.

### ***Helpful Treaty change***

Meanwhile, the Treaty of Maastricht (1992) made some bold advances in the area of European Union citizenship. Article 8b(2) laid down that:

*... [E]very citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.<sup>4</sup>*

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<sup>1</sup> De Gucht Report, adopted 10 October 1991 by 150 to 26 with 30 abstentions; OJ C 280, 28.10.1991.

<sup>2</sup> De Gucht Report, adopted 10 March 1993 by 207 to 79 with 19 abstentions; OJ C 115, 26.4.1993.

<sup>3</sup> Northern Ireland had enjoyed STV since 1979 because of the overwhelming need to reflect minority opinion in the province. In 1999 10 Liberal Democrats, 2 Greens, 2 Plaid Cymru and 3 UKIP MEPs were elected to the Parliament, witness to the importance of proportional representation to the legitimation of the European Parliament.

<sup>4</sup> Later Article 19(2) of the Treaty establishing the European Community (TEC). The Treaty of Maastricht

Helpfully, this provided a legal base for measures to stimulate transnational electoral politics and increase civic participation.

At the same time, the Treaty of Maastricht amended Article 138 to give to the Parliament the right of assent to the Council's proposal for a uniform electoral procedure. It also introduced a new Article 138a which establishes that:

*Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.*

Tony Blair's victory in May 1997 had a beneficial effect on the closing stages of the Intergovernmental Conference which led up to the signing of the Treaty of Amsterdam. First, the new Treaty capped the size of the Parliament at 700 – with 99 for Germany and 87 each for France, Italy and the United Kingdom.<sup>1</sup> It then added a new, cryptic clause, as follows:

*In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.*

Third, the Amsterdam Treaty inserted a new sub-paragraph establishing that the term of office of the Parliament is five years.<sup>2</sup> Fourth, the new Treaty amended Article 190(4) (formerly Article 138(3)), as follows:

*The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform electoral procedure in all Member States **or in accordance with principles common to all Member States.***<sup>3</sup>

This revision reflected the more pragmatic approach of the Parliament as articulated in the De Gucht Report. In particular, the change would allow the Irish to continue to use the Single Transferable Vote (STV) instead of a largest average list system.

Lastly, a new Article 190(5) was usefully added by the Treaty of Amsterdam:

*The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members.*

### ***The Anastassopoulos Report***

Immediately after the signing of the Treaty of Amsterdam in 1997, the Committee on Institutional Affairs appointed Parliamentary Vice-President Georgios Anastassopoulos as its rapporteur on the electoral procedure. His task was to see whether a new proposal could be agreed on the basis of the revised Article 190(4), that is, whether 'principles common to all Member States' offered a better basis for uniformity than 'a uniform electoral procedure in all Member States'.

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necessitated a revision of the 1976 Act, in Council Decision 93/81; OJ L 33, 9.2.1993.

<sup>1</sup> Article 138(2), subsequently Article 190(2).

<sup>2</sup> This, which became Article 190(3), simply codified the 1976 Act.

<sup>3</sup> Rapporteur's emphasis.

Anastassopoulos found a ‘very broad consensus’ among States on a number of common principles, including, not least, proportional representation. He dropped the idea of trying to craft territorial constituencies in a uniform manner, but insisted on their creation in States with more than 20 million inhabitants. Notably, he raised the question of whether a portion of seats – he proposed ten per cent - could be distributed proportionately from transnational (gender balanced) lists as from the 2009 elections. National thresholds should remain optional. Preferential voting should be encouraged as a stimulus to turnout. Dual parliamentary mandates would be banned. He proposed bringing the elections forward from June to May (in order to avoid summer holidays in Northern states), and to truncate the time for polling itself to two days maximum. The far-reaching Anastassopoulos Report was adopted by Parliament on 15 July 1998 by 355 votes to 146 with 39 abstentions.<sup>1</sup>

In 2002 the Council modified the 1976 Act in order to codify the introduction everywhere of proportional representation, to allow explicitly STV and preferential voting, to cater for territorial constituencies, to fix a maximum threshold of 5 per cent, to phase out the dual mandate, and to let national law apply to the withdrawal of mandates and the filling of vacancies.<sup>2</sup> The bolder proposals of the Parliament's Anastassopoulos Report were not adopted by the Council.<sup>3</sup>

### *Nice, Laeken and the Convention*

Parliament was unsuccessful in raising the matter of its electoral procedure at the Nice Intergovernmental Conference. Instead, the closing stages of the IGC in December 2000 were marked by the bruising row over the redistribution of seats in the Parliament. In the end, the size of the House for 2004-09 (for the then twenty-five States) was to grow to 732 seats: Germany retained 99, France, Italy and the UK maintained parity on 78, and Spain and Poland had 54 each. (Later, upon the accession of Bulgaria and Romania, it was agreed that from 2009 there would be 736 seats: again Germany was to retain 99, France, Italy and the UK were to fall to 72 each, Spain and Poland to 50.)

The Treaty of Nice modified Article 190(5), as follows:

*The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting **by a qualified majority**, lay down the regulations and general conditions governing the performance of the duties of its Members. **All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.***<sup>4</sup>

An amendment was made to Article 191 to create a legal base for the creation of a statute for European political parties. The Council was empowered to lay down regulations governing European parties and particularly their financing, in co-decision with the Parliament.

On the road to recovery from the disappointment of the Nice Treaty, the Laeken Declaration, in December 2001, posed various pertinent questions about the future role of the European Parliament. ‘Should the role of the European Parliament be strengthened? Should we extend

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<sup>1</sup> OJ C 292, 21.9.1998; Parliament’s resolution is reproduced in Annex I.

<sup>2</sup> Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage; OJ L 283, 21.10.2002.

<sup>3</sup> For a full account, see Dr George N. Anastassopoulos *The Debate on the System of Electing the Members of the European Parliament*, foreword by Professor Dimitris Th. Tsatsos MEP, Athens & Brussels, 2002.

<sup>4</sup> Rapporteur's emphasis.

the right of codecision or not? Should the way in which we elect the members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined?' When the constitutional Convention discussed these questions, however, it must be admitted that the electoral system was of a lower order of priority to those of the powers of the Parliament and its place in the inter-institutional balance.<sup>1</sup>

The Convention proposed, sensibly enough, that the electoral system should be subject to a law or framework law of the Council, acting unanimously on a proposal from and with the consent of the Parliament.<sup>2</sup> As far as the shape of the Parliament was concerned, the Convention proposed that the European Council should take a decision, by unanimity, on a proposal from and with the consent of Parliament. The size was capped at 736. 'Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.'<sup>3</sup> Furthermore, the Charter of Fundamental Rights was to become mandatory, Article 39 of which set out the right of every citizen to vote or stand in the European Parliamentary elections in the Member State in which he or she resided, under the same conditions as nationals of that State.

The IGC of 2003-04 which followed up the work of the Convention made no change in the procedures but adapted the relevant clause (Article I-20(2)) to read as follows:

*The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed 750 in number. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than 96 seats.*

This was rather similar to a proposal made by Germany at the time of Maastricht, but at that stage rejected. It has been suggested that the significance of the change of the historic wording – from 'representatives ... of the peoples of the States brought together in the Community' to 'representatives of the Union's citizens' - was lost on some observers. Although the term 'peoples' is not thought to have any precise legal meaning in the current Treaty, the change to 'citizens' was not accidental: indeed, the elevation of the EU citizen was accentuated elsewhere in the constitutional treaty.<sup>4</sup> And representatives of the Parliament in the Convention and at the subsequent IGCs were hopeful that the change would encourage the further development of transnational politics, leading to a more popular recognition of the post-national political space.

### ***The Treaty of Lisbon***

The recent story of the 'period of reflection' and the negotiation of the Treaty of Lisbon is more familiar. At the Intergovernmental Conference, Parliament chose neither to press the case for a uniform electoral procedure nor, as had at one time been mooted, for a reform of the privileges and immunities regime.

Away from the constitutional negotiations, there was significant progress. The first statute for

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<sup>1</sup> The rapporteur was a member of the Convention on the Future of Europe (2002-03) and was one of Parliament's three representatives to the 2007 IGC.

<sup>2</sup> Article III-232 of the Draft Treaty establishing a Constitution for Europe (2003).

<sup>3</sup> Article I-19(2) of the Draft Treaty establishing a Constitution for Europe (2003).

<sup>4</sup> Notably, Article I-45(2) which said that 'Citizens are directly represented at Union level in the European Parliament', (later replicated by the Treaty of Lisbon in Article 10(2) of the Treaty on European Union).

European political parties was delivered in 2003, extended to party political foundations in 2007.<sup>1</sup> Likewise, the Statute for Members of the European Parliament was at last agreed in 2005.<sup>2</sup>

While the matter of the electoral procedure was not raised during the Lisbon renegotiation of the constitutional treaty, an intense controversy broke out concerning the proposal to redistribute seats for the Parliament to be elected in 2009. Parliament fulfilled the request of the European Council of June 2007 to make a proposal for the redistribution of seats. Parliament succeeded, in the Lamassoure-Severin Report (2007), in convincingly defining how the principle of degressive proportionality should be applied in practice, thus: ‘the ratio between the population and the number of seats of each Member State must vary in relation to their respective populations in such a way that each Member from a more populous Member State represents more citizens than each Member from a less populous Member State and conversely, but also that no less populous Member State has more seats than a more populous Member State’.<sup>3</sup>

However, one State, Italy, objected to the proposal, consequent on the above, to give it 72 seats compared with the UK (73) and France (74). In the last minutes of the IGC a compromise was reached which raised the size of the Parliament to 751 - that is, 750 plus its President – and the extra seat was given to Italy. Unfortunately, however, this arrangement breached the strict application of the principle of degressive proportionality (as defined by Parliament), because an Italian MEP represents fewer people than a Spanish colleague, despite the fact that Spain is less populous than Italy.<sup>4</sup> Notwithstanding this lapse from purity, the Lamassoure-Severin definition of degressive proportionality has been accepted, at least in theory, by both Parliament and Council.

In any case, after the little drama over parliamentary seats, the Treaty of Lisbon was finally signed on 13 December 2007 and entered into force, eleven months late, on 1 December 2009.

Article 14 of the new Treaty on European Union, as revised by Lisbon, reads as follows.<sup>5</sup>

*1. The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.*

*2. The European Parliament shall be composed of representatives of the Union’s citizens. They shall not exceed 750 in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than 96 seats.*

*The European Council shall adopt by unanimity, on the initiative of the European*

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<sup>1</sup> Respectively, Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding; OJ L 297, 15-11-2003; and Regulation (EC) No 1524/2007 of 18 December 2007; OJ L 343, 27-12-2007.

<sup>2</sup> Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom), OJ L 262, 07-10-2005.

<sup>3</sup> From paragraph 6 of the Lamassoure-Severin Report, adopted 11 October 2007 by 378 votes in favour to 154 against, with 109 abstentions; A6-0351/2007 (OJ C 227 E, 4.9.2008, p. 132).

<sup>4</sup> The political agreement on the redistribution of seats was confirmed by the European Council on 14 December 2007 (paragraph 5 of the Presidency Conclusions).

<sup>5</sup> References to the Treaty of Lisbon are from the consolidated version of the Treaties, OJ C 115, 9.5.2008.

*Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.*

*3. The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.*

*4. The European Parliament shall elect its President and its officers from among its members.*

Article 223 of the Treaty on the Functioning of the European Union reads as follows:

*1. The European Parliament shall draw up a proposal to lay down the provisions necessary for the election of its members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.*

*The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements.*

*2. The European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.*

In parallel with the long negotiations on treaty revision, the EU made substantial progress in establishing the basic conditions for the uniform election of the European Parliament in spite of the absence of a single electoral law. Of the problems encountered by previous rapporteurs on this dossier, several have already been dispensed with satisfactorily, notably:

- a form of proportional representation has been established in all States;
- the dual mandate is abolished;
- European political parties and foundations have been established and financed;
- terms and conditions of MEPs are harmonised.

There is another category of issues that might have seemed problematical at the outset of the exercise to introduce direct elections but, with the benefit of experience, no longer do so - such as the eligibility of independent candidates and control of election expenses. Here no problems seem to have arisen by the mere application of national discretion and electoral practice.

Notwithstanding the progress made so far, this Report is asked to address the revision of the 1976 Act on direct elections to the European Parliament. And twelve years after Parliament last visited the dossier with the Anastassopoulos Report, and a good four years before any practicable reform of the electoral procedure would be brought into force (in 2014), this indeed seems a good time to initiate further reforms.

Parliament's importance and powers have grown substantially since 1979. This has not been mirrored by the rather limited revisions to the 1976 Act since then. Now the Treaty of Lisbon has at last entered into force, MEPs have become much more powerful. Parliament both needs and deserves an electoral system and an internal organisation which is commensurate with its new duties.

### *The quest for degressive proportionality*

Because the Treaty of Lisbon was not yet in force, the 2009 elections were fought on the basis of the Treaty of Nice (736 seats within a range of 5 to 99 seats per Member State). There will in any case, therefore, have to be a complete redistribution of seats before the 2014 elections to take into account the provisions of the Lisbon treaty as well as demographic change and the possible accession of new States to the Union.<sup>1</sup>

The principle of degressive proportionality is an elegant federalist concept according to which the interests of smaller minorities are protected by awarding the less populous States relatively higher representation than the more populous States. Despite the agreement of the European Council in December 2007 to accept the European Parliament's proposal, the principle of degressive proportionality has yet to be applied in practice. In the 2004 Parliament, there were ten states which had too many or too few MEPs. In the present Parliament, elected in June 2009, there are nine. Even after the admission of the 18 extra 'Lisbon' MEPs, there will remain five 'transgressions', as the chart and graph in Annex II illustrates.

It is important to recognise that the present 'system' for the distribution of seats is really no more than a political fix – and one that is constantly unstable. One obvious destabilising factor is that Germany has a rapidly declining population and that the gap between it, on the one hand, and France, the UK and Italy, on the other, with rising populations, will narrow over the coming decades. If Germany remains with the maximum number of seats (96) despite its falling population, the next most populous states will have to be given a much larger number of seats than at present. Such an outcome will severely prejudice the interests of the medium sized states, thus jeopardising degressive proportionality. So demographic change presents a formidable challenge to the continuation of the present arrangements, to say nothing of the political bartering which inevitably accompanies a redistribution of seats.

The Treaty, at least, says that no state shall be allocated more than 96 seats, opening up the option of gradually reducing Germany's tally to reflect its declining population.<sup>2</sup> At the bottom end of the scale, however, there is no such flexibility: six seats is the basic threshold. One recalls that over the next two decades prospective accession states include at least Croatia, Iceland, the six countries of the Western Balkans and Turkey.

The problem of fitting everyone in fairly beneath the ceiling of 751 according to the principle of degressive proportionality lies directly at the door of Parliament which, under Lisbon, acquires the right (and the duty) to initiate changes in the composition of the House during each mandate. Parliament will also be responsible for proposing the temporary addition of

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<sup>1</sup> In the event that Croatia joins the EU during the term of the 2009-14 Parliament, its seats will be added temporarily to the 751, as per the precedent of Bulgaria and Romania. Likewise with Iceland.

<sup>2</sup> Article 14(2) TEU. However, one notes that the now redundant draft decision of the European Council on the composition of the 2009-14 Parliament requires that 'the minimum and maximum numbers ... must be fully utilised to ensure that the allocation of seats ... reflects as closely as possible the range of populations'. This is, frankly, bizarre.

MEPs from accession states during a five-year mandate.

The fact that Germans are disproportionately under-represented in the European Parliament formed part of the motivation of the plaintiffs who brought a case against the Lisbon treaty to the German Federal Constitutional Court. In its judgment of June 2009, the Court concluded, after a diverting discussion of the merits of degressive proportionality, that the system as proposed in the Treaty is acceptable because the EU falls short of being a federal state. The Court found that, in spite of the Union's pretensions to European citizenship, the European Parliament is in fact made up of national contingents. Unlike the Bundestag, the European Parliament is not an assembly of equals. Nor is it the supreme authority of the European sovereign people. Germany's representation elsewhere in the government system of the Union compensates for what might in other circumstances be considered its unfair treatment in the Parliament. Moreover, the Treaty contains optional instruments of transnational participatory democracy, such as the citizens' initiative, which usefully complement the role of MEPs.<sup>1</sup>

The Lisbon judgment of the Karlsruhe Court remains controversial. One does not have to accept its findings, however, to take note of the sensitivity of the issue of how the Parliament is to be composed in the future. At the very least, now that the Lisbon is in force, it will be essential for the decision on the future composition of the Parliament to apply scrupulously the principle of degressive proportionality if litigation in the European Court of Justice is to be avoided.

It may well be that the time has come to look more seriously at arriving at a mathematical formula for the distribution of seats which will be durable, transparent and impartial to politics.<sup>2</sup>

### ***Extending the franchise***

It is clear that, because nationality laws are highly variable, there is unequal access to the rights of EU citizenship between one Member State and another. Moreover, the position of nationals of one State who live for a prolonged period in another is also far from uniform. This is particularly relevant when it comes to the loss of franchise at home and the ability to acquire it, or not as the case may be, in the receiving State.<sup>3</sup> Add the layer of twenty-seven complex electoral laws on top of twenty-seven nationality laws and one can quickly see why it has hitherto been considered to be impractical as well as impolitic for the Union to launch a programme of wholesale harmonisation.<sup>4</sup>

There still remains, therefore, a serious problem of disenfranchisement of EU citizens who choose to exercise their EU-given right to live in another Member State. The removal of legal obstacles to free movement has not resulted in practice in an extension of the democratic franchise.<sup>5</sup>

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<sup>1</sup> Federal Constitutional Court Judgment of 30 June 2009, especially paragraphs 279-297; [http://www.bundesverfassungsgericht.de/entscheidungen/es20090630\\_2bve000208en.html](http://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html)

<sup>2</sup> See, for example, Victoriano Ramirez et al, 'Degressively Proportional Methods for the Allotment of the European Parliament Seats Amongst the EU Member States' in *Mathematics and Democracy*, Springer, Berlin 2006.

<sup>3</sup> UK citizens, for example, lose the right to vote in UK elections after 15 years abroad.

<sup>4</sup> The EU's approach to date has been rightly tentative: see Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; OJ L 158, 30-04-2004.

<sup>5</sup> See Dimitry Kochenov, 'Free Movement and Participation in the Parliamentary Elections in the Member State

Over the years, however, considerable efforts have been made to encourage people to vote in the European elections. Particular attention has been paid to EU citizens living in a Member State other than their own – a growing number of people now comprising about 2 per cent of the EU's total population. The Barroso I Commission tried to revise Directive 93/109 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.<sup>1</sup>

Parliament backed the Commission's proposals to simplify the bureaucratic procedures involved in registering to vote or stand, and in verification by States of the eligibility of such registrations. However, Parliament took issue with the blanket ban in the 1993 legislation against candidates standing in more than one State at the same election, and asked the Council to relax the current restrictions. Parliament based its position on the fact that, while Article 8 of the 1976 Act forbids dual voting, no such express prohibition applies to the matter of candidature and, furthermore, that an extension of the transnational character of the EU polity depends to some extent on the potential possibility to vote for candidates of a different nationality to one's own. Parliament also sought to ensure that the State of residence is not automatically obliged to prevent a citizen from voting if he or she has been deprived of his or her electoral rights in another State. MEPs are of the view that, in both cases, it should be up to the States concerned to decide on a case by case basis, in order to prevent discrimination. They referred to the stipulation introduced by the Treaty of Maastricht whereby any citizen has the right to vote or stand in the European Parliamentary elections in the State where he or she resides, under the same conditions as nationals of that State.<sup>2</sup>

A more radical option would be to extend the scope of EU law more widely to allow EU citizens the right to participate not only in European and municipal elections but also in national and regional parliamentary elections. Such an initiative at the EU level would be sure to run into accusations of being in breach of the twin principles of subsidiarity and proportionality. The proposal, therefore, which would necessitate a change to Article 22 TFEU would have to be well debated in a Convention which, of course, includes national parliamentarians as well as governments, the Commission and MEPs.

In the absence of such a treaty change, a federally minded core group of States might attempt enhanced cooperation in electoral law. An extension of bilateral reciprocal franchise rights, such as exist between the UK, Ireland, Cyprus and Malta, would be another way to develop the political rights of EU citizens without formal EU intervention.<sup>3</sup> One might also anticipate a petition on the matter of electoral rights under the new provision of the Treaty of Lisbon for citizens' initiatives.<sup>4</sup> In any event, should the political climate ever become more amenable to boosting the political content of EU citizenship, the Council can always act to extend the scope of citizenship rights without having to resort to the full paraphernalia of an IGC.<sup>5</sup>

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of Nationality: An Ignored Link?' in *Maastricht Journal of European and Comparative Law* (MJ), 2009, no. 2.

<sup>1</sup> OJ L 329, 30.12.1993.

<sup>2</sup> Duff Report (A6-0267/2007) on the Proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. Adopted by the Parliament on 26 September 2007 (OJ C 219 E, 28.8.2008, p. 193) the matter remains unresolved in the Council.

<sup>3</sup> For a full discussion of these issues, see Jo Shaw, *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*, Cambridge, 2007.

<sup>4</sup> Article 11(4) TEU.

<sup>5</sup> Article 25 TFEU.

## *Nationality and citizenship*

The Italian protest, launched in the Lisbon IGC, about the number of its seats in the Parliament after 2009 was based, in part, on the claim that the new Treaty would shift the basis on which Parliament should be composed from that of population to that of citizens. The two are different, of course, especially in those countries, such as Italy, which have been more reluctant to naturalise their immigrants than others. However, according to Eurostat, it is impossible to be precise about figures, especially at this time of large-scale movement of people across the internal frontiers of the EU. Eurostat continues to argue, in accordance with UN conventions, that total resident population is the most reliable demographic comparator. Eurostat's estimate is that 94 per cent of the EU population is resident in their home state, 4 per cent are non-EU citizens, and that only 2 per cent are EU citizens living in another Member State.

One recalls that the definition of EU citizen depends entirely on the acquisition of nationality of a Member State. There is no way of becoming an EU citizen without being a national of a Member State. It may be regretted that in almost all States the process of naturalisation and the granting of dual citizenship is becoming more complicated than it used to be. And States are acting individually without regard for the effect of their actions on the breadth or quality of EU citizenship.

Such unilateral tendencies are somewhat discordant with the efforts to revise the EU Treaties in a citizen-friendly way. The Treaty on European Union as amended by the Treaty of Lisbon, for example, is robust about what EU citizenship means, as follows:

### Article 9

*In all its activities, the Union shall observe the principle of equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.*

### Article 10

*1. The functioning of the Union shall be founded on representative democracy.*

*2. Citizens are directly represented at Union level in the European Parliament.*

*Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.*

*3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.*

*4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.*

The EU has no single definition of its citizenship, therefore, but twenty-seven national varieties. The array of nationality laws among the twenty-seven States of the EU is

bewildering.<sup>1</sup> Some States grant special privileges to third country nationals of ancestral affinity; others most emphatically do not. Some have residential rights for ex-colonial subjects; others do not. Member States treat the civic rights of their overseas territories or dependencies in many different ways. There has been no attempt by the EU to harmonise these laws, although there are many instances of imitation among States. The European Court of Justice has asserted that the right of Member States to set their own rules about the acquisition or loss of nationality is constrained by the necessity to respect EU law.<sup>2</sup> In this context, the 2005 decision by Spain to legalise as many as 700.000 immigrants without consulting its partners received a lot of attention.

Whatever approximation may be achieved in electoral law, however, there will still be the outstanding problem of how to distribute seats in the European Parliament. Do the changes made by the Treaty of Lisbon to Article 14 of the Treaty on European Union on the status of EU citizenship really matter in this context? Should we be counting EU citizens rather than national inhabitants? If so, who precisely is the European Union citizen? Or do we follow James Madison's belief that, in the republic, parliamentary representation is more of a birthright than a civic privilege? The Madisonian approach suggests that the European Parliament represents not only *de jure* EU citizens (as formally established by the EU Treaty), but that it also represents, and has a duty of care towards, anyone else who abides in the territory of the Union, including minors and denizens. That being the case, and all other things being equal, the traditional method of distributing seats in the Parliament on the basis of total population – to say nothing of counting votes in the Council – still seems to be the right one and should not be amended at least without deeper reflection.

### ***The need for further reform***

The European Parliament should not be complacent about its own electoral methods. If it is to continue to regularly preach the virtues of pluralist liberal democracy to other countries it needs also to be more self-critical.

The OSCE/ODIHR conducted its first fully-fledged observer mission to the European Parliamentary elections in 2009. Its findings are interesting.<sup>3</sup> First, the OSCE team was struck by how different the elections were in each State, noting variances in the methods of distributing seats, the possibility to cast preferential votes, the allocation of vacant seats, electoral systems, franchise, candidature, nomination of candidates, constituencies and polling days. The international observers also found it odd that the European political parties are effectively forbidden from electoral campaigning.<sup>4</sup>

The OSCE/ODIHR criticised in particular:

- a lack of harmonization of candidacy requirements throughout the EU;
- a lack of provisions in some States allowing individual candidates to run in the elections in line with OSCE commitments;

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<sup>1</sup> See Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (eds), *Acquisition and Loss of Nationality: policies and trends in 15 European states*, Institute for European Integration Research, Austrian Academy of Sciences, Vienna, January 2006.

<sup>2</sup> See, for example, Cases C-369/90 Micheletti[1992], C-145/04 *Spain v. United Kingdom* [2006] (Gibraltar) and C-300/04 *Eman and Sevinger v. College van burgemeester en wethouders van Den Haag* [2006] (Aruba).

<sup>3</sup> OSCE/ODIHR Expert Group Report, *Elections to the European Parliament, 4-7 June 2009*, Warsaw, 22 September 2009.

<sup>4</sup> Regulation EC 2004/2003, as amended in 2007.

- a lack of provisions in some States on voting rights, particularly for prisoners and for EU residents who do not hold citizenship of any State;
- a lack of possibility to appeal to a court decision regarding election results in some States;
- a lack of provisions in some States to ensure adequate access and cooperation for domestic and international observers, in line with OSCE commitments.

Their recommendations included:

- reviewing some of the current practices for awareness-raising campaigns with a view to increasing effectiveness and avoiding possible perceptions of partisanship;
- ensuring that national campaign legislation adequately addresses the activities of European-level political parties;
- unifying the dates of the elections in order to ensure that the publication of results respects both the need for transparency and the need to avoid potential influence on the results in other States;
- improving the process of exchange of information on registered voters so as to protect the equality of the vote and avoid possible multiple voting;
- amending legislation where necessary to provide for an independent media monitoring mechanism to assess whether media provisions are respected during the campaign period.

In their valuable report, which deserves close attention, the OSCE/ODIHR unearthed numerous complaints from EU citizens allegedly deprived of the franchise when resident in States other than their own. The experts back the Commission's attempt to improve the situation with regard to voting and standing as a candidate.

### *Petitions*

The Petitions Committee of the European Parliament has received a number of serious complaints about one or another aspect of the European elections. Several of those stem from EU citizens now resident in Spain or Malta who object to being disallowed from voting in the European elections by the action (or, more usually, non-action) of the local electoral authorities. Other complaints have been received about non-nationals being barred from joining a political party in their new State of residence.

The most glaring cases raised by petitioners of alleged discrimination are found in Latvia and Estonia where as much as 20 per cent and 12 per cent, respectively, of the population which is Russian are regarded as 'non-citizens' for the purposes of the European and other elections.

Several petitioners from Italy wish to exclude all convicted criminals from standing as a candidate to the European Parliament. The general rule across the EU, however, is that once a sentence has been served or a penalty paid there is no further bar to rehabilitation, including electoral participation. Most States leave it to political parties - and ultimately, the voters - to exercise their discretion as to who should be elected to parliament.

Nevertheless, it may be possible, after further investigation, to introduce the right of recall of MEPs, whereby a Member convicted of a crime after his or her election to the European Parliament could be recalled by a petition of voters. This would be particularly appropriate in a case of gross misuse of public funds.

Another petitioner has raised the issue of why in the United Kingdom hereditary peers who sit in the House of Lords are disqualified from standing for election as MEPs.<sup>1</sup>

Petitions have also been received about the disenfranchisement of people (a) from voting after a period of time in elections in their country of origin, and (b) from voting in their new country of residence in national parliamentary elections. As discussed previously, the issue of widening the franchise to national elections would require a treaty change and should, therefore, be properly the subject of a Convention charged to consider the relationship between EU citizenship and electoral reform.

The Convention should be invited to consider all the other issues raised by the Parliament's petitioners and by the OSCE/ODIHR.

### ***Legitimacy and turnout***

The European Parliament is correct to wish to have an enhanced standing in the eye of the public so that it becomes the focus of the new European political space, the accepted forum of the single political market: making European laws and budgets, and holding the executive to account. To date, the search for political legitimacy is being undermined by the continuing decline in turnout at elections, by scanty media reportage, by apathetic political parties and, even, by the latent jealousy of some national parliaments about its growing powers. It is hard not to be depressed by the fact that overall turnout in the European Parliamentary elections has fallen steadily from 63.0 per cent in 1979 to 43.1 per cent in 2009.<sup>2</sup>

On any measure, the falling turnout is evidence of a level of disengagement from European affairs. Nevertheless, the overall turnout figures disguise very large variations between countries stemming from their legal, historical and actual circumstances. The length of EU membership, the incidence of corruption, or the imminence of a national general election, for example, make a big difference to turnout.<sup>3</sup> In 2009 the turnout in Luxembourg was over 90 per cent, while in Slovakia it was under 20 per cent. The important factor is the gap between national and European voting habits: the EU mean gap in 2009 was 25 per cent, meaning that of every three voters in national elections, only two turned out for the European Parliament. In the Netherlands the ratio was two to one.<sup>4</sup>

Can a formal reform of the electoral procedure rectify the turnout problem? Our criteria for initiating a new bout of reform should be carefully defined. We are not seeking uniformity for uniformity's sake. In catering for perceived problems at the national level, our approach should be realistic. Gradualism, perforce, has worked over the years to bring forth many of the objectives first articulated by the founding fathers of the Union in the 1950s. This reform is unlikely to be the last: strong parliaments adapt readily to changing societal and political circumstances. In the case of the EU, the pace and scale of future enlargement is a big unknown. Without knowing the future size and shape of the Union, it would be foolhardy to try to settle today the final destiny of post-national parliamentary democracy in Europe.

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<sup>1</sup> The answer is because, ironically, the residuary aristocratic element in the House of Lords is the only part of that chamber which is itself elected (by their peers). 'Life peers' are not elected to and cannot resign from the House of Lords.

<sup>2</sup> See Annex III.

<sup>3</sup> In Belgium, Cyprus and Luxembourg voting is compulsory.

<sup>4</sup> See the study by Richard Rose and Gabriela Borz, *Variability in European Parliament Turnout: political causes and implications*, Studies in Public Policy Number 466, Centre for the Study of Public Policy, University of Aberdeen, 2010.

But we know at least enough about the alternative scenarios for Europe's future for us to be certain that a strong, vital, directly elected Parliament should be - and will be - at the heart of its system of governance.

### ***Privileges and Immunities***

There is important unfinished business concerning the Protocol on Privileges and Immunities. This instrument dates back almost fifty years to a time when Members of the European Parliament were also Members of their national parliaments, and when it was no doubt appropriate that national authorities were responsible for deciding when and how MEPs should be exempted from national law. At the time of the agreement on the Members' Statute in 2005, however, Parliament took the view that the Protocol should be revamped to accord with the Parliament's contemporary status as an independent, directly elected and fully responsible assembly. There have been a number of instances of conflict between the national and EU regimes concerning the verification of the credentials of MEPs and for the filling of vacancies which have exposed real discrepancies over the legal position of MEPs in their 27 different home states. Parliament should now be enabled to take action against the withdrawal of a mandate of an MEP by a State where and in so far as national law is in conflict with the Act or the law of the European Union;

As an integral part of the negotiated agreement on the Members' Statute, Council agreed to review any consequences the Statute might have in terms of primary law. Parliament has asked that its resolution of June 2003 which proposed new provisions on the privileges and immunities of MEPs should be used as a basis for that review.<sup>1</sup> To date, there has been no progress on this matter. What is needed now, after Lisbon, is for these important questions to be placed on the agenda of a Convention tasked to consider all aspects of parliamentary reform.

### ***Gender and ethnic imbalance***

The number of women MEPs has more than doubled since the first elections in 1979, and now stands at 35.5 per cent of the total. Here again, there are marked variances among States. In the 2009 Parliament, Finland and Sweden have a majority of women MEPs; less than a third of MEPs from Slovenia, Lithuania, Ireland, Italy, Poland, the Czech Republic and Luxembourg are women; and Malta has none.<sup>2</sup>

We do not propose to impose quotas to redress the gender imbalance. However, political parties should be urged to aim for a target of there being at least 40 per cent of women in 2014, as recommended by the Parliamentary Assembly of the Council of Europe.

It should be noted that in almost all States, women's representation is better in the European Parliament than it is in the national parliaments.

The position with regard to ethnic minorities is much worse. There are very few Asian or Afro-Caribbean MEPs. If EU citizenship is to be made a reality for immigrant communities and their descendants, the political parties must ensure a decent mix of ethnicity among their top candidates.

### ***Drawing conclusions***

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<sup>1</sup> See OJ C 068E, 18-03-2004, pp. 115-126 and OJ C 303E, 13-12-2006, pp. 830-831.

<sup>2</sup> See Annex IV.

It is clear from this discussion that there remain a significant number of important questions of electoral procedure which, if addressed effectively, would make the elections to the Parliament more uniform in the future than they have been in the past and should bring benefits in terms of cohesion, legitimacy, efficiency and pluralism.<sup>1</sup>

We have already signalled our view that a Convention on electoral reform is both necessary and desirable to consider in a democratic and comprehensive manner the complex set of interrelated issues of franchise, turnout, composition, privileges and voting system. It would be useful in any case - and if nothing else - to review the different national electoral systems in use with a view to ironing out the more obvious dissimilarities and anomalies.<sup>2</sup>

While it must be a major objective of electoral reform to encourage increased turnout, there will be some proposals - for example, reducing the voting age - which may not be conducive to achieving that goal but which, nevertheless, have some intrinsic merit.

The critical goal is to enhance the European dimension to these elections so that public opinion and the media engage in making political choices about the future of the European Union. Here the role of the European political parties will be critical. Without viable political parties at the federal level, an essential sinew of democracy is missing. That is why it is proposed that, in addition to the 751 MEPs elected in the traditional way from national and regional constituencies, a supplement of 25 MEPs is added to the next Parliament in 2014 to be elected from a single, pan-EU constituency. It is the European political parties which would be responsible for selecting the candidates, ordering their list, and competing with each other for votes. Such an innovation would transform the elections to the European Parliament and increase its representative capability – reflecting the Lisbon treaty change that lays down that MEPs are now to be ‘representatives of the Union’s citizens’ rather than ‘representatives of the peoples of the States’.<sup>3</sup>

Voting for the EU-wide list will, of course, be optional, with a second ballot paper being offered to each voter in the polling stations. One might expect the take-up of this option to grow over time as the electorate became accustomed to the new dimension to politics and the political parties became skilled at campaigning on an EU-wide basis.

If we are to enhance the transnational character of the European Parliament, it would be important at the same time to avoid the alienation of voters by only accentuating the large size of the Union and the perceived distance of ‘Brussels’ from the individual citizen. As persistent Eurobarometer and other opinion polls suggest, the electorate is scarcely well informed about the EU’s system of governance. Voters tend to identify best with smaller electoral districts. They also respond positively to being able to exercise a choice between voting merely en bloc for a preordained party list, on the one hand, and, on the other, being able to indicate a preference for an individual candidate from the party list. Action can be taken to address both of those issues. That is why the Report proposes, first, the mandatory creation of regional, territorial constituencies within the larger States and, second, the compulsory use of the preferential semi-open list system.

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<sup>1</sup> The rapporteur is grateful for the stimulus provided by the participants in a workshop on *Citizenship and Electoral Procedure*, held in Brussels on 25-26 March 2008. Papers were contributed by Betty de Hart, Dieter Gosewinkel, Sara Hagemann & Simon Hix, Eva Østergaard-Nielsen, Ken Ritchie and Jo Shaw. These papers and a summary of the discussion can be found at:

<http://www.europarl.europa.eu/activities/committees/hearings.do?body=AF&language=EN>

<sup>2</sup> See Annex V.

<sup>3</sup> Article 14(2) TEU and Article 189 TEC, respectively.

These are the key proposals in the Report. They are designed to broaden the democratic legitimacy of the European Parliament by strengthening the idea of European citizenship. They will give the European political parties a *raison d'être* that they do not have at the moment. They will usefully complement the reforms introduced already by the Lisbon treaty with respect to representative and participatory democracy.

In summary, therefore, the proposals raised in this Report include reforms to:

1. Create a transnational constituency for 25 additional MEPs to be elected by a second vote according to a preferential list system, gender-balanced;
2. Make mandatory the establishment of territorial constituencies on a regional basis in the more populous States;
3. Insist on preferential voting by the semi-open list system (whereby electors can vote for individual candidates within a party list in order to overturn the ordering of the party list);
4. Introduce a regular review of the distribution of the 751 seats during each Parliamentary mandate in time for the next elections which respects the principle of degressive proportionality and, maybe, accords with a yet-to-be-agreed mathematical formula;
5. Facilitate arrangements for EU citizens living in a state other than their own to stand as candidates and vote;
6. Create an EU electoral authority to manage and oversee the transnational list election, and to hear appeals;
7. Reduce the polling timetable to the weekend in order both to dramatise the vote and to reduce the malpractice of premature disclosure of results (requiring change in Ireland, the Netherlands and the UK);
8. Shift the elections from June to May in order to expedite the election of the new Commission;
9. Propose uniform minimum ages for electors and for candidates;
10. Establish a supranational regime for the privileges and immunities of MEPs;
11. Explore an extension of e-polling in an effort to mobilise voters and facilitate voting.

### ***The process of reform***

The package of reforms proposed here requires a number of instruments of EU primary law to be made according to different procedures.

- (a) The introduction of an EU-wide list for 25 additional MEPs requires a change to Article 14(2) TEU via the procedures laid down for the ordinary revision of the treaty, namely a Convention followed by an IGC, with ratification by all the states.<sup>1</sup>
- (b) Revision of the Protocol on Privileges and Immunities necessitates the same procedure.
- (c) The redistribution of the 751 seats in time for the next elections requires a unanimous decision of the European Council on a proposal and with the consent of the Parliament.<sup>2</sup>
- (d) Other elements concerning the electoral procedure require a special law of the Council, acting unanimously, on a proposal and with the consent of Parliament, acting by an absolute majority of its Members, followed by the endorsement by all national

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<sup>1</sup> Article 48(2), (3) and (4) TEU.

<sup>2</sup> Article 14(2) TEU.

parliaments.<sup>1</sup>

That special legislative procedure may take the form of an amendment to the 1976 Act, as is proposed in this Report. Alternatively, it may, however, be thought more suitable for reasons of transparency to introduce a new protocol to the Treaties on the electoral procedure which would replace the original legislation and incorporate all the different elements of primary law discussed here.

Once the basic reforms proposed here are carried, implementing legislation will be required in due course, for example, to establish the new EU electoral authority.

There will be budgetary consequences both for the EU and States as a result of these reforms.

While different instruments and procedures are required, the reforms constitute a coherent package of measures which should be considered in their entirety. Fortunately, the forum of the Convention provides the perfect mechanism for a comprehensive deliberation on a set of issues which are fairly complex, will have a big impact on national law, and carry important constitutional implications.

A Convention will be in a good position not only to engage the European Council, Commission and national parliaments in a substantive debate on parliamentary reform, but also to stimulate wider consultation with representatives of political parties, academia, electoral officers, non-governmental organisations etc.

It would be appropriate for Parliament, in submitting its proposals to the Council for treaty revision, to indicate at the same time that it will be requiring the holding of a Convention.

The timetable suggests itself: approval by Parliament of its proposals July-September 2010; decision of European Council to convene an IGC, October-December; holding the Convention and IGC, spring and summer 2011; national ratification and European Parliament consent by June 2012, followed by implementing measures; decision on redistribution of seats by May 2013 at the latest, in time for the elections to take place under the reformed system in early May 2014.

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<sup>1</sup> Article 223(1) TFEU.

## **ANNEX I TO THE EXPLANATORY STATEMENT: Resolution on a draft electoral procedure incorporating common principles for the election of Members of the European Parliament (Anastassopoulos Report)<sup>1</sup>**

*The European Parliament,*

- having regard to the motion for a resolution by Mr De Vries on the uniform electoral procedure for the election of Members of the European Parliament (B4-0723/96),
  - having regard to its reports on a uniform electoral procedure, and in particular its resolutions of 10 October 1991<sup>2</sup> and 10 March 1993<sup>3</sup>,
  - having regard to the Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to the Council Decision of 20 September 1976,
  - having regard to the proposal of 22 October 1996 on a uniform electoral procedure which was tabled by the Government of the Federal Republic of Germany at the Intergovernmental Conference (IGC) and which reproduces the key aspects of Parliament's resolution of 10 March 1993,
  - having regard to Article 138(3) of the EC Treaty and the modification thereof effected by the Treaty of Amsterdam,
  - having regard to Rule 148 of its Rules of Procedure,
  - having regard to the report of the Committee on Institutional Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0212/98),
- A. whereas the Treaty of Amsterdam introduces the concept of 'principles common to all Member States', following the guidelines set out by Parliament in its resolution of 10 March 1993 referred to above, which did not explicitly propose a uniform electoral system but merely general guidelines,
- B. whereas the Government of the United Kingdom has tabled a bill in Parliament, introducing regional proportional representation for the European elections in 1999,
- C. whereas the negotiations on enlargement will probably lead to ten new Member States joining the European Union,
- D. whereas a very broad consensus has emerged among the Member States on determining a number of common principles,
- E. whereas those principles are intended to be implemented in the first instance at national level in a union of peoples and states; whereas the number of Members elected in each Member State is intended to guarantee appropriate representation of the peoples of the states brought together in the Community,

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<sup>1</sup> Adopted on 15 July 1998; OJ C 292, 21.9.1998.

<sup>2</sup> OJ C 280, 28.10.1991, p. 141.

<sup>3</sup> OJ C 115, 26.4.1993, p. 121

1. Welcomes the agreement reached by negotiators at the IGC establishing a number of common principles; is convinced that some of the provisions can enter into force for the next European elections, particularly a system of proportional representation, the minimum threshold, incompatibilities and measures aimed at reaching the objective of equality between men and women, whereas others should be phased in;
2. Considers that there is a general consensus on introducing voting based on a system of proportional representation, and that this should be incorporated into the European electoral system;
3. Notes that it is impossible to establish a system of territorial constituencies in a uniform manner and that there has to be a distinction based on the population of each Member State; emphasises, however, that a system of territorial constituencies must not affect the principle of proportional representation, in accordance with Article 2 of the draft Act;
4. Considers that, with a view to a European political awareness and the development of European political parties, a certain percentage of seats could be distributed on a proportional representation basis within a single constituency formed by the territory of the Member States;
5. Observes, where the use of a threshold is concerned, that this should remain optional and in any event should not exceed 5% of the votes cast nationally;
6. Notes the stimulus to participation represented by preferential voting, which should, however, remain optional for each Member State;
7. Considers that when lists of candidates for European elections are drawn up account must be taken of the objective of equality between men and women and that it is primarily a matter for the political parties to achieve this objective directly;
8. Proposes that European elections should be held on a date in the month of May, so as to maximize the turnout by avoiding the school summer holidays, which start at the beginning of June in several Member States;
9. Recommends that the number of days on which elections can be held should be reduced to the absolute minimum, with a view to reaching a consensus on a single voting day, or, if this is not possible, no more than two days (e.g. Saturday and Sunday);
10. Calls on the Council to examine the following draft Act and to adopt it speedily so as to enable it to enter into force as soon as possible;
11. Instructs its President to forward this resolution and the draft Act annexed to it to the Council, the Commission and the parliaments and governments of the Member States.

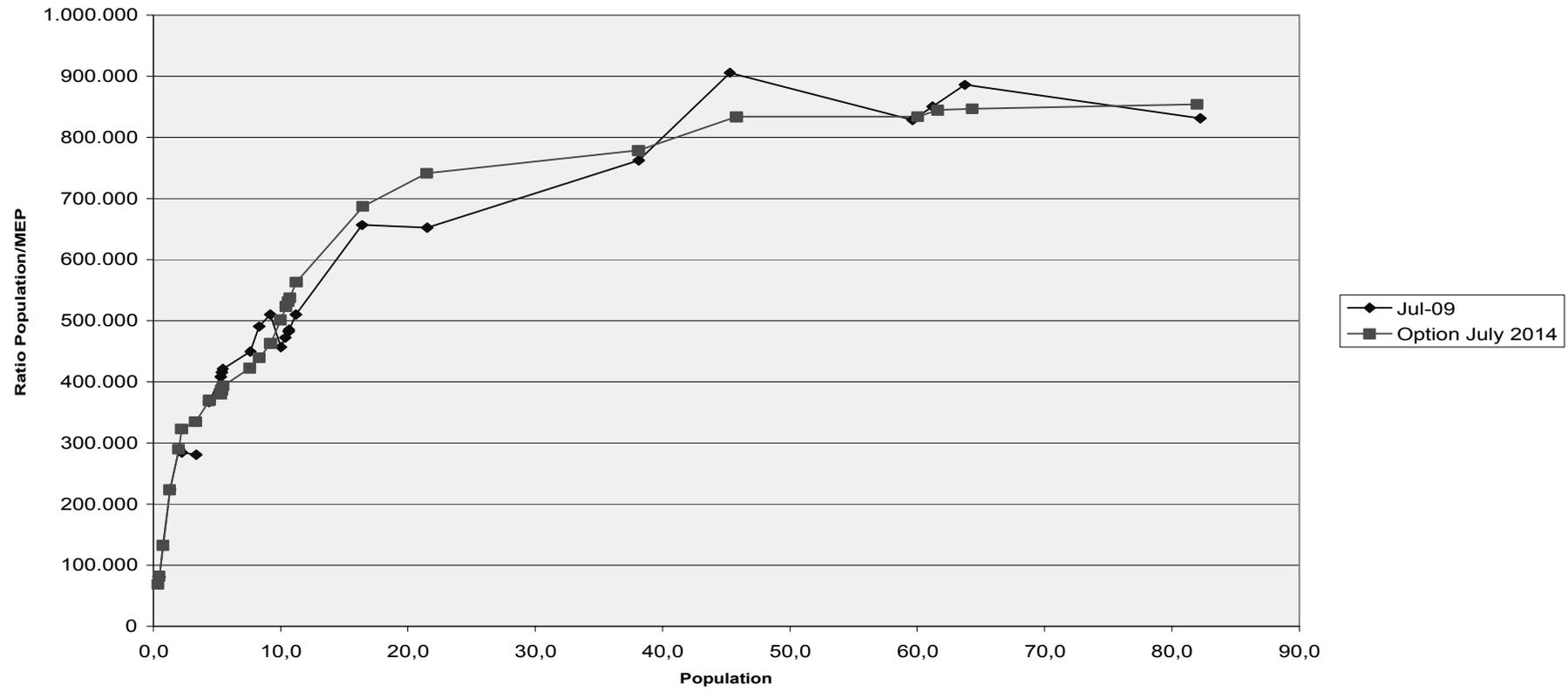


## ANNEX II TO THE EXPLANATORY STATEMENT: Distribution of Seats (2009 - 2014)

State	Population 2008 (millions)	% of EU-27 population	MEPs July 2009	July 2009 - Ratio Population/MEP	July 2009 + 18 MEPs	July 2009 + 18 MEPs - Ratio Population/MEP	Population 2009 (millions)*	% of EU-28 population	Option MEPs July 2014	Option July 2014 - Ratio Population/MEP
Germany	82,218	16,53%	99	830.483	99	830.483	82,002	16,25%	96	854.188
France	63,753	12,82%	72	885.460	74	861.528	64,351	12,76%	76	846.724
United Kingdom	61,186	12,30%	72	849.806	73	838.164	61,635	12,22%	73	844.315
Italy	59,619	11,98%	72	828.046	73	816.703	60,045	11,90%	72	833.958
Spain	45,283	9,10%	50	905.666	54	838.580	45,828	9,08%	55	833.236
Poland	38,116	7,66%	50	762.312	51	747.365	38,136	7,56%	49	778.286
Romania	21,529	4,33%	33	652.382	33	652.382	21,499	4,26%	29	741.345
Netherlands	16,405	3,30%	25	656.216	26	630.977	16,486	3,27%	24	686.917
Greece	11,214	2,25%	22	509.718	22	509.718	11,260	2,23%	20	563.000
Belgium	10,667	2,14%	22	484.859	22	484.859	10,750	2,13%	20	537.500
Portugal	10,618	2,13%	22	482.618	22	482.618	10,627	2,11%	20	531.350
Czech Rep.	10,381	2,09%	22	471.868	22	471.868	10,468	2,08%	20	523.400
Hungary	10,045	2,02%	22	456.609	22	456.609	10,031	1,99%	20	501.550
Sweden	9,183	1,85%	18	510.161	20	459.145	9,256	1,83%	20	462.800
Austria	8,332	1,67%	17	490.112	19	438.521	8,355	1,66%	19	439.737
Bulgaria	7,640	1,54%	17	449.424	18	424.456	7,607	1,51%	18	422.611
Denmark	5,476	1,10%	13	421.215	13	421.215	5,511	1,09%	14	393.643
Slovakia	5,401	1,09%	13	415.462	13	415.462	5,412	1,07%	14	386.571
Finland	5,301	1,07%	13	407.769	13	407.769	5,326	1,06%	14	380.429
Ireland	4,401	0,88%	12	366.775	12	366.775	4,450	0,88%	12	370.833
Croatia							4,435	0,88%	12	369.583
Lithuania	3,366	0,68%	12	280.533	12	280.533	3,350	0,66%	10	335.000
Latvia	2,271	0,46%	8	283.863	9	252.322	2,261	0,45%	7	323.000
Slovenia	2,026	0,41%	7	289.414	8	253.238	2,032	0,40%	7	290.286
Estonia	1,341	0,27%	6	223.483	6	223.483	1,340	0,27%	6	223.333
Cyprus	0,789	0,16%	6	131.550	6	131.550	0,797	0,16%	6	132.833
Luxembourg	0,484	0,10%	6	80.633	6	80.633	0,494	0,10%	6	82.333
Malta	0,410	0,08%	5	82.060	6	68.383	0,414	0,08%	6	69.000
Iceland							0,319	0,06%	6	53.167
<b>EU</b>	<b>497,456</b>	<b>100,00%</b>	<b>736</b>	<b>675.891</b>	<b>754</b>	<b>659.755</b>	<b>504,477</b>	<b>100,00%</b>	<b>751</b>	<b>671.740</b>

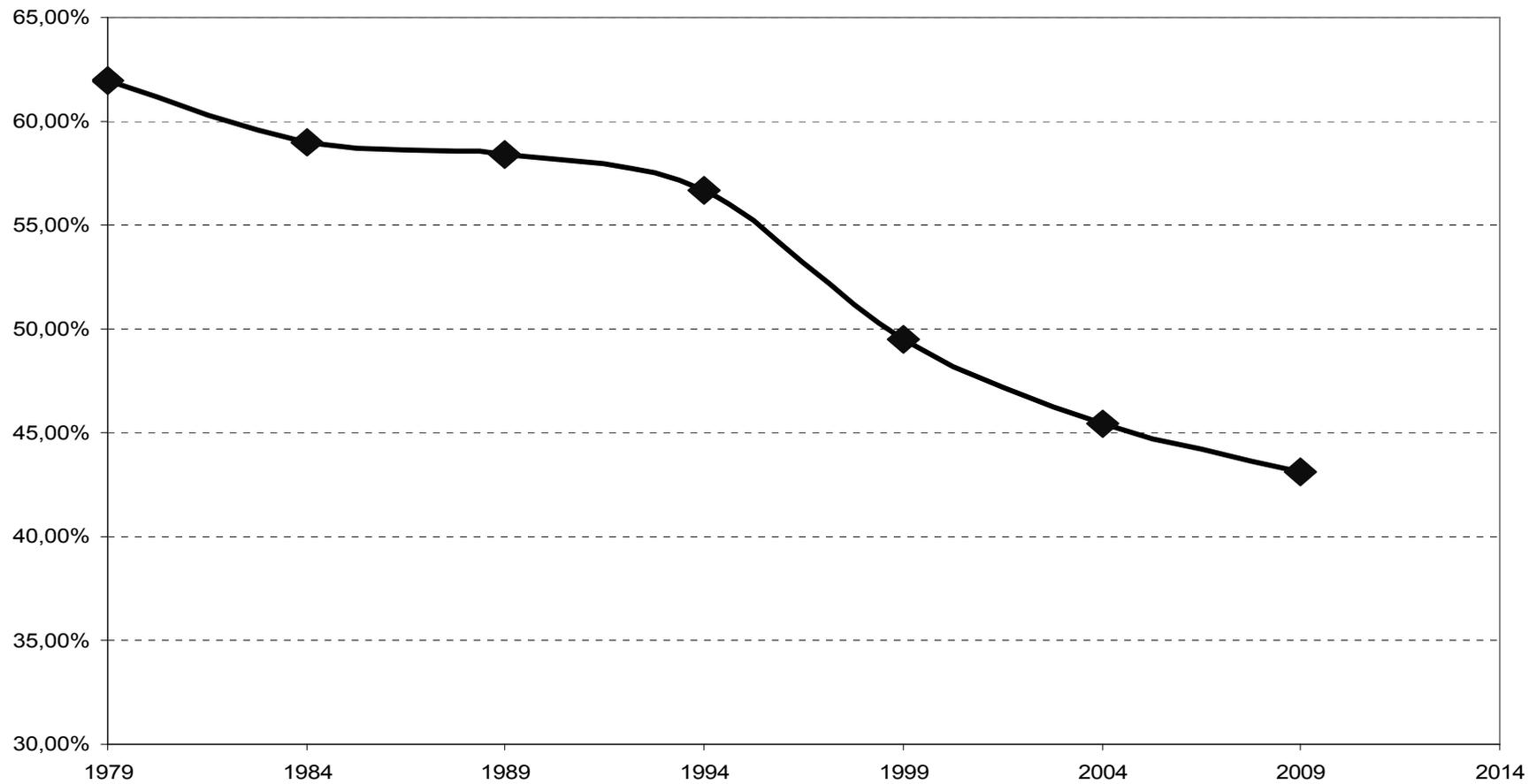
Note: The shaded fields indicate where degressive proportionality is not achieved.  
\* Eurostat, November 2009

EP Seats degressive proportionality

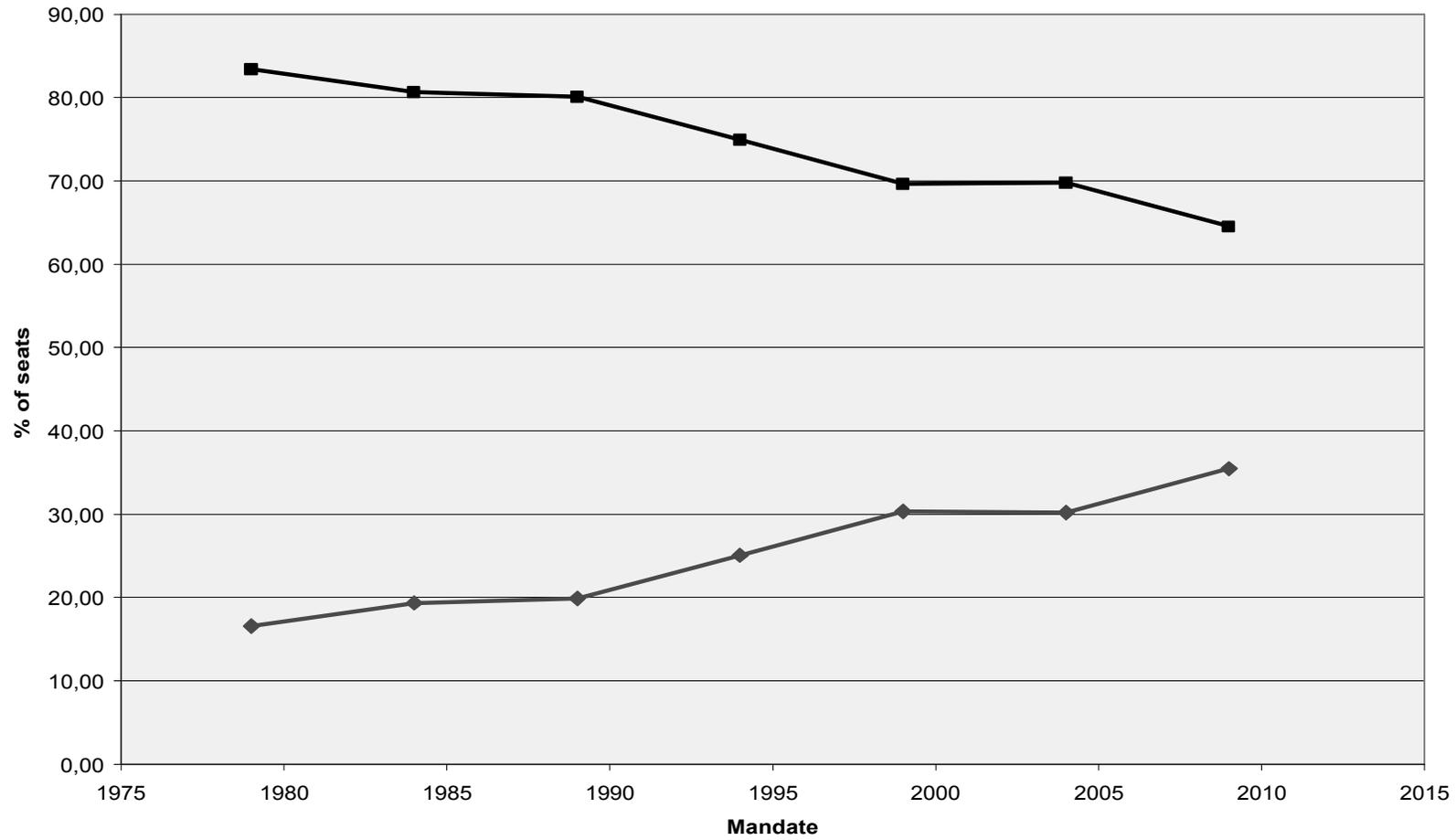


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**ANNEX III TO THE EXPLANATORY STATEMENT: European Parliament Voter *Turnout* (1979 - 2009)**



### ANNEX IV TO THE EXPLANATORY STATEMENT: Gender Imbalance



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## ANNEX V TO THE EXPLANATORY STATEMENT: European Parliament: Current Electoral Practice in Member States

	Constituencies	Preferential voting	Distribution of seats	Thresh old	Franchise	Candidature	Nomination of candidates	Polling days
<b>AUSTRIA</b>	Single national constituency	Yes	D'Hondt	4%	Age: 16 - Registered EU citizens	Age: 18 - Registered EU citizens	Fee of € 3600 per list; candidate must be supported by 3 MPs, one MEP or 2600 registered voters	Sunday
<b>BELGIUM</b>	Three linguistic electoral colleges (Dutch, French, German); and four regional constituencies: 1. Flanders (Dutch electoral college), 2. Wallonia (French electoral college), 3. Brussels-Hal-Vilvorde (BHV) (either Dutch or French electoral college), 4. 2 cantons (German electoral college)	Yes	D'Hondt	No	Age: 18 - Registered EU citizens - BE nationals resident in other member states (BE nationals residing outside the EU cannot vote in EP elections); - voting compulsory: failure to vote carries a penalty	Age: 21 - Registered EU citizens - Must speak the relevant language of electoral college	Endorsement of candidates: - by 5 BE MPs belonging to relevant linguistic group; - by 5000 registered voters in Wallonia, Flanders & BHV; - by 200 voters registered in the German speaking constituency	Sunday
<b>BULGARIA</b>	Single national constituency	Yes	Hare-Niemeyer	No	Age: 18 - EU citizens resident for 3 months or in another member state	Age: 21 - EU citizens resident for 2 years or in another EU member state -	- Individuals need 10.000 signatures and pay 10.000 leva (€ 5100); - Political parties need 15.000 signatures and pay 15.000 leva (€ 7700); - Coalitions need 20.000 signatures and pay 20.000 leva (€ 10.250)	Sunday

	Constituencies	Preferential voting	Distribution of seats	Thresh old	Franchise	Candidature	Nomination of candidates	Polling days
<b>CYPRUS</b>	Single national constituency	No	D'Hondt / Droop	No	Age: 18 - CY and EU citizens resident 6 months before the elections; - Special electoral roll; - Voting is compulsory (but no penalty)	Age: 25		Sunday
<b>CZECH REPUBLIC</b>	Single national constituency	Yes: each voter has 2 votes. To be elected need 5% of votes delivered for his/her political party	D'Hondt	5%	Age: 18 - EU citizens resident for 45 days;	Age: 21 - EU citizens resident for 45 days;	- Only political parties or coalitions may nominate candidates; - Fee of 15.000 crowns (€ 585)	Friday & Saturday
<b>DENMARK</b>	Single national constituency	No	D'Hondt	No	Age: 18 - DK citizens with permanent residency in EU; - Registered EU citizens	Age: 18 - Any person with right to vote in EP elections;	- Parties represented in the Folketing or EP; - New parties need signatures of voters corresponding to at least 2% of votes in previous Folketing election;	No fixed day
<b>ESTONIA</b>	Single national constituency	No	D'Hondt		Age: 18	Age: 21	- Registered political parties submit lists; - A deposit of 5 times the minimum monthly wage	Sunday
<b>FINLAND</b>	Single national constituency	Yes	D'Hondt	No	Age: 18 - Registered EU citizens	Age: 18 - Registered EU	- Political parties or voters' association (formed of at least 2000 persons) nominate candidates	Sunday

	Constituencies	Preferential voting	Distribution of seats	Thresh old	Franchise	Candidature	Nomination of candidates	Polling days
<b>FRANCE</b>	Eight regional constituencies	No	D'Hondt	5%	Age: 18 - Registered EU citizens	Age: 23 - Registered EU citizens	- Gender equality	Sunday
<b>GERMANY</b>	Single national constituency - but members elected from either Land or Federal lists	No	Sainte-Laguë (according to change of law 17 March 2008; BGBl. I, p. 394)	5%	Age: 18 - Registered EU citizens	Age: 18 - Registered EU citizens	- Lists submitted by political parties established in EU; - For Federal list: parties with less than 5 representatives in EP, Bundestag or Land parliaments need 4000 signatures; For Land list: 2000 signatures needed	Sunday
<b>GREECE</b>	Single national constituency	No	Variant of Hare	3%	Age: 18	Age: 21	- Lists submitted by political parties or coalitions;	Sunday
<b>HUNGARY</b>	Single national constituency	No	D'Hondt	5%	Age: 18 - Registered EU citizens	Age: 18 - All voters have right to stand for election as candidates on party lists	- Lists submitted by registered party <i>and 20.000 endorsements</i> (a voter can only endorse one list)	Sunday
<b>IRELAND</b>	Four regional constituencies	Yes	Single Transferable Vote (STV)	No	Age: 18	Age: 21	- Lists submitted by registered political parties; - Independent candidates need 60 signatures of persons on the electoral register and from the same constituency	Friday
<b>ITALY</b> (under current review)	Five regional constituencies	Yes - and votes can be transferred from one constituency to another	Hare	No	Age: 18 - Registered EU citizens; - IT citizens in other EU states may vote at Italian consulates or by	Age: 25 - Registered EU citizens	- Individual nominations need 30.000 signatures, 10% of which must come from each sub-region of the constituency; - Political parties and	Saturday / Sunday

	Constituencies	Preferential voting	Distribution of seats	Thresh old	Franchise	Candidature	Nomination of candidates	Polling days
					post; IT citizens residing outside EU if they return to vote in IT; - Voting not compulsory but a 'civic duty'		groups with at least one seat in EP or in IT parliament can submit lists without signatures	
<b>LATVIA</b>	Single national constituency	No	Sainte-Laguë	No	Age: 18	Age: 21	- Lists submitted by registered political parties; - Deposit of LVL 1.000 (€ 1.450)	Saturday
<b>LITHUANIA</b>	Single national constituency	Yes	Hare-Niemeyer	5%	Age: 18	Age: 21	- Only political parties can nominate candidates;	Sunday
<b>LUXEMBOURG</b>	Single national constituency	Yes - electors have 6 votes	D'Hondt / Hagenbach-Bischoff	No	Age: 18 - EU citizens resident for 5 years; - Voting is compulsory	Age: 18 - EU citizens resident for 5 years	- Lists need 250 signatories of registered voters or of one MEP or of members of the Chamber of Deputies; - Lists must be composed of a majority of LUX nationals	Sunday
<b>MALTA</b>	Single national constituency	Yes	STV	No	Age: 18	Age: 18	- Deposit of 40 Maltese pounds (€ 95) (reimbursed if 10% of vote)	Saturday
<b>NETHERLANDS</b>	Single national constituency	Yes	D'Hondt	No	Age: 18 - Registered EU citizens	Age: 18 - Registered EU citizens	- Parties not represented in the EP must pay a deposit of € 450; - Lists must be accompanied by at least 30 signatures of voters	Thursday
<b>POLAND</b>	Thirteen regional constituencies	No	D'Hondt / Hare-Niemeyer	5%	Age: 18 - Registered EU citizens	Age: 21 - EU citizens resident for 5 years	- Lists need at least 5 names and 10.000 signatures of voters of the relevant constituency	Sunday
<b>PORTUGAL</b>	Single national	No	D'Hondt	No	Age: 18	Age: 18	- Lists must contain	Sunday

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	Constituencies	Preferential voting	Distribution of seats	Thresh old	Franchise	Candidature	Nomination of candidates	Polling days
	constituency						candidates equal to the number of MEPs to be elected, plus 3-8 substitutes	
<b>ROMANIA</b>	Single national constituency	No	D'Hondt	5%	Age: 18 - Registered EU citizens	Age: 23 - Registered EU citizens	- Lists need 200.000 signatures; independent candidates 100.000	Sunday
<b>SLOVAKIA</b>	Single national constituency	Yes	Droop	5%	Age: 18 - Registered EU citizens resident and present on election day	Age: 21 - Registered EU citizens	- Political party deposit of 50.000 SKK (€ 1510)	Saturday
<b>SLOVENIA</b>	Single national constituency	Yes	D'Hondt	4%	Age: 18	Age: 18	- Political parties submit lists supported by four members of the National Assembly or at least 1000 voters; - Independent candidates endorsed by 3000 signatures	Sunday
<b>SPAIN</b>	Single national constituency	No	D'Hondt	No	Age: 18 - Registered EU citizens	Age: 18 - Registered EU citizens	- Parties or coalitions submit lists with 15.000 signatures of voters or of elected representatives	Sunday
<b>SWEDEN</b>	Single national constituency	Yes	Sainte-Lagüe	Parties must obtain 4%; candidates must obtain 5% of the total	Age: 18 - Registered EU citizens	Age: 18 - Anyone entitled to vote may stand for election	- No conditions	Sunday

	Constituencies	Preferential voting	Distribution of seats	Thresh old	Franchise	Candidature	Nomination of candidates	Polling days
				number of votes cast for his/her party				
<b>UNITED KINGDOM</b>	Twelve regional constituencies	Great Britain: No Northern Ireland: Yes	Great Britain: D'Hondt; Northern Ireland: STV	No	Age: 18 - Registered EU citizens resident for 1 year	Age: 21 - Registered EU citizens resident for 1 year	- Deposit of £ 5.000 (€ 6750); - Nominations in constituencies must be endorsed by 30 voters	Thursday

Exchange rates as of February 2008